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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re M.C. et al., Persons Coming Under the
Juvenile Court Law.

MERCED COUNTY HUMAN SERVICES
AGENCY,

Plaintiff and Respondent,

v.

E.L.,

Defendant and Appellant.

F077505

(Super. Ct. Nos. 16JP00048A,
16JP00048B, 16JP00048C,
16JP00048D)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Merced County. Donald J. Proietti, Judge.

Linda J. Conrad, under appointment by the Court of Appeal, for Defendant and Appellant.

James N. Fincher, County Counsel, and Laura Bakker, Deputy County Counsel, for Plaintiff and Respondent.

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* Before Franson, Acting P.J., Meehan, J. and Snauffer, J.

Appellant E.L. (mother) appealed from a judgment terminating her parental rights as to her now eight- and six-year-old daughters and three- and two-year-old sons. (Welf. & Inst. Code, § 366.26.)¹ Mother filed an opening brief contending the juvenile court failed to adequately comply with the inquiry and notice requirements of the Indian Child Welfare Act (ICWA) (25 U.S.C. § 1901 et seq.). Respondent conceded error and stipulated to reversal and an immediate remand with instructions to comply with the ICWA. After reviewing the record, we conclude the juvenile court failed to adequately comply with the ICWA and reverse with the requested directions.

PROCEDURAL AND FACTUAL SUMMARY

Mother's children were taken into protective custody in May 2016 after she gave birth to her youngest son in a motel room. She refused to go to the hospital to avoid testing positive for methamphetamine on a urine drug screen. She and the child tested positive for amphetamines. Mother and father were homeless, and mother had an untreated mental illness.

Mother said she had Sioux Indian heritage through her father and Apache Indian heritage through her mother. The Merced County Human Services Agency (agency) sent the "Notice of Child Custody Proceeding for Indian Child" (ICWA-030) by certified mail, return receipt requested, to all the known Apache and Sioux tribes and included the names, addresses and birthdates for the parents and maternal grandmother and the name of the maternal grandfather.

The juvenile court ordered the children removed and provided the parents reunification services. By the six-month review hearing in January 2017, the agency was still awaiting responses from the tribes as to the children's Indian status. In its report for the hearing, the agency recommended the juvenile court find the ICWA did not apply.

¹ Statutory references are to the Welfare and Institutions Code.

The agency did not attach to its report the return receipts or responses from the Bureau of Indian Affairs or any of the tribes. The court found the ICWA did not apply and continued reunification services. At the 12-month review hearing in September 2017, the court terminated reunification services and set a section 366.26 hearing. Following a contested section 366.26 hearing in April 2018, the juvenile court terminated parental rights. Only mother appealed.

DISCUSSION

In her sole issue on appeal, mother contends the agency failed to comply with section 224.2 in that it failed to file return receipts and responses from the tribes. Respondent concedes the error.

A stipulated reversal under Code of Civil Procedure section 128, subdivision (a)(8) is permissible in a dependency case when the parties agree that reversible error occurred, and the stipulated reversal will expedite the final resolution of the case on the merits. (*In re Rashad H.* (2000) 78 Cal.App.4th 376, 380-382.) The parties agree that insufficient notice was provided under the provisions of the ICWA and that reversal of the judgment is appropriate, with directions to the juvenile court to make a proper ICWA inquiry. Section 224.2, subdivision (c) provides, with exceptions not here pertinent, that “[p]roof of the notice, including copies of notices sent and all return receipts and responses received, shall be filed with the court in advance of the hearing.” California Rules of Court, rule 5.482(b) provides that “[p]roof of notice filed with the court must include *Notice of Child Custody Proceeding for Indian Child* (form ICWA-030), return receipts, and any responses received from the Bureau of Indian Affairs and tribes.” Reversal is therefore appropriate given the agency and juvenile court’s failure to provide adequate ICWA notice. Although only mother appealed, the parental rights termination order must be reversed as to both parents. (*In re Mary G.* (2007) 151 Cal.App.4th 184, 208.)

DISPOSITION

The order terminating parental rights is conditionally reversed as to both parents. On remand, the juvenile court is directed to conduct further proceedings to determine whether the agency complied with the notice requirements of the Indian Child Welfare Act (ICWA) and Welfare and Institutions Code section 224.2 and, in particular, the proof of notice requirements of Welfare and Institutions Code section 224.2, subdivision (c). If the court determines the agency did not comply, the court shall direct the agency to comply. If after the agency has issued new notices of hearing and filed proof of said notices and all return receipts and responses have been received and filed with the court in full compliance with the ICWA and Welfare and Institutions Code section 224.2, the court shall determine whether the ICWA applies. If, after proper notice, there is no response, or the tribes determine the children are not Indian children within the meaning of the ICWA, the court is directed to reinstate all previous findings and terminate parental rights. However, if a tribe determines the children are Indian children as defined by the ICWA, the court is directed to conduct a new Welfare and Institutions Code section 366.26 hearing in conformity with the ICWA provisions. The Clerk/Executive Officer of this court is directed to issue a remittitur immediately. (Cal. Rules of Court, rule 8.272(c)(1).)